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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re D. L., a Person Coming Under the
Juvenile Court Law.

B206288

(Los Angeles County
Super. Ct. No. CK62170)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

DENNIS L. et al.,

Defendants and Appellants.

APPEALS from a judgment of the Superior Court of Los Angeles County,
Anthony Trendacosta, Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and
Appellant Dennis L.

Kimberly A. Knill, under appointment by the Court of Appeal, for Defendant and
Appellant Da.L.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County
Counsel, and Dennis M. Hippach, Associate County Counsel, for Plaintiff and
Respondent.

Dennis L. (Father) and Da.L. (Mother) are the parents of D. L. (D.), who was born in December 2005. Mother has another child E. L. (E.), born in April 2000, who is not a party to this appeal. A third child, born to Mother in December 2003 with positive tests for marijuana, amphetamines, and methamphetamine, died shortly after birth. The Department of Children and Family Services (the Department) filed a petition as to D. and E. on January 25, 2006, pursuant to Welfare and Institutions Code section 300, subdivisions (b), (g), and (j),¹ alleging that 1) Mother had a history of substance abuse and used drugs during her pregnancy with D.; 2) Father had a history of substance abuse; 3) E.'s father, Robert H., had a history of substance abuse; 4) Mother left E. in the care of his grandmother without making plans for his ongoing care and supervision; 5) Father and Robert had a criminal history of drug-related offenses; and 6) the home was found in a filthy and unsanitary condition. The petition was amended by interlineation and the counts alleged pursuant to subdivision (b) of the petition were sustained on February 28, 2006.

At the section 366.26 hearing on February 26, 2008, the court terminated Father's and Mother's parental rights to D. and found by clear and convincing evidence that D. would be adopted. Father and Mother filed separate notices of appeal. We consolidated the two appeals under case number B206288 (Mother appealed in case number B207372). Father contends that the court erred in terminating parental rights without an assessment report of the nature of the visits between D. and her parents, and by ordering adoption as the permanent plan. Mother filed a brief joining in Father's arguments.

FACTUAL AND PROCEDURAL BACKGROUND

On December 19, 2005, the Department received a referral alleging that 16-day-old D. was living in a home with several methamphetamine users. A Department

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All further statutory references are to the Welfare and Institutions Code.

command post worker and police visited the parents' home in Sylmar that day and found that seven adults resided there. In an interview, Mother and Father admitted to prior drug use but claimed they did not currently use drugs. Subsequent phone calls and letters to the parents to schedule medical appointments for D. and drug testing for the parents went unanswered.

One month later, the social worker made an unannounced visit to the home in Sylmar, and found it to be unsanitary and bug-infested. The other rooms of the house were locked and a large dog was in the home. D. was there with Mother. D. and E., who was in the care of the maternal grandparents, were taken into custody. D. was placed in foster care and E. was placed with the maternal grandparents.

On January 25, 2006, the court found a prima facie case for detaining D. and E. and determined there was no reasonable means to protect the children without removing them from the parents' custody. The court ordered that Mother and Father be referred for substance counseling and testing, parenting classes, and individual counseling. Mother and Father were given monitored visits. D. was allowed to have extended visits with the maternal grandparents pending completion of the assessment of their home.

In February 2006, Father admitted to the social worker that the other residents of the Sylmar house used drugs, but said that he and Mother did not. He had told the other residents not to provide Mother with drugs. Father admitted to being a "recreational" drug user. Father was on probation for drug-related offenses and the probation officer reported that Father had tested positive for methamphetamines on or about January 13, 2006. Both parents stated that they were planning on moving out of the Sylmar house. Father said he was going to live in another residence which belonged to his grandmother but he could not provide any documentation or contact information about the residence. Mother and Father said they had not visited their children due to transportation problems even though the Department had provided them with bus tokens. Both children were now staying with the maternal grandparents.

At a hearing on February 28, 2006, monitored visits were ordered, with the Department having discretion to liberalize visitation. The parents were ordered to test

weekly for drug use. The matter was set for a section 366.21, subdivision (e) six-month review hearing on May 30, 2006.

In an interim review report prepared for the May 30, 2006 hearing, the social worker reported that she had sporadic contact with Mother and that Mother and Father had visited the children twice in April. The maternal grandmother reported that the visits went well. Mother called the children periodically, but due to her financial situation she was unable to talk for very long. Neither parent had submitted documentation regarding participation in parenting classes. The May 30th hearing was continued to August 2006.

The August 2006 social worker's report indicated that the children, six-year-old E. and eight-month-old D., were doing well at the maternal grandparents' home. Mother and Father were still living at the Sylmar house. The parents had not enrolled in court-ordered programs even though the Department had left information and referrals for them. The parents had also been provided with bus tokens. Mother and Father reportedly visited the children three to four times a month but Mother claimed they were prevented from visiting more often because of transportation problems. The social worker told the parents that the Department could provide funds to purchase gas for the trips to the grandparents' home.

Father was arrested on a drug charge and released from jail on September 9, 2006, to a restricted in-patient facility. The social worker was unable to contact the parents during the months of August and September. Mother was not showing up for drug tests. Mother said she had last seen D. at the hearing on August 30, 2006.

The November 2006 social worker's report stated that Mother and Father had not seen the children since July 8, 2006, except during court hearings. Mother had only called them once, in April 2006. There were no phone calls from Father. The maternal grandmother provided the social worker with a visitation/phone log, which was attached to the report.

The six-month review hearing was held on November 21, 2006. The court found that return of the minors to the physical custody of the parents would create a substantial risk of detriment to the physical and emotional well-being of the minors. It also found

that Mother was not in compliance with the case plan and reunification services were terminated for her. The Department was ordered to facilitate visits for Father at his residential rehabilitation program. A hearing was set for March 20, 2007.

In the March 2007 status review report, the social worker reported that Father's drug treatment program would be complete as of March 2007 but Father did not yet know where he would be living. He hoped to regain custody of D. and live with Mother. Mother reported that she and Father had last seen the children a few weeks earlier. The children were doing well in the maternal grandparents' home. The report stated that Father had visited the children 12 times since their detention in January 2006.

At the March 20, 2007 hearing, parental rights were not terminated, but adoption was identified as a permanent placement goal. The hearing was continued to June 26, 2007. At the June 26, 2007 hearing, the matter was continued to September 11, 2007.

On September 11, the court conducted a section 366.26 hearing as to E. and a contested section 366.22 hearing as to D. On that date, Mother filed a section 388 petition, and the court noted that it would conduct a concurrent hearing on the petition. The parents and the maternal grandmother testified.

The maternal grandmother testified that she had kept a log of the parents' visits and telephone calls with regard to the children. She said that she jotted down "what was said or what was done." Since June 2007, the parents visited generally once a month, but prior to that time the visits were sporadic. She stated that Mother visited more often than Father. Although the parents lived an hour and a half away from the grandparents' home and had transportation problems, they did not ask the grandparents to bring the children to the parents' home. On one occasion, the parents asked the grandparents to bring the children to a halfway point, and the grandparents complied.

Father testified he completed an outpatient drug rehabilitation program and had found a new residence. He told the court he had completed a parenting course and had undergone counseling through the Salvation Army. He offered no testimony regarding visitation with the children.

Mother said she had completed drug rehabilitation and parenting classes. She stated that she visited the children as much as she possibly could, but admitted she had difficulty arranging visits due to financial and transportation limitations. She acknowledged that a social worker had told her the Department would reimburse her for transportation expenses incurred when visiting the children.

After hearing argument from counsel, the court took the matter under submission.

At a hearing on September 18, the court denied Mother's section 388 petition. It found that Father was in partial compliance with the case plan, but concluded that the return of D. to the physical custody of the parents would create a substantial risk of detriment to her physical and emotional well-being. The court terminated reunification services and declared the maternal grandparents prospective adoptive parents. The matter was continued to January 15, 2008, for a contested section 366.26 hearing as to D. and a permanency planning hearing as to both children.

At the January 15 hearing, the parents filed section 388 petitions, which were subsequently denied. Because new counsel for the parents had to be appointed, the hearing was continued to February 26.

On February 26, 2008, the court conducted the section 366.26 hearing as to D. It received the Department reports without objection. Noting that the reports contained no information regarding whether the parents visited the children after December, it asked if additional visits had taken place. The maternal grandmother said no visits had occurred other than one on the date of the January 15 hearing. Counsel for the parents pointed out that the Department reports did not provide any information regarding the nature of the visits; however neither attorney objected to the admission of the reports nor requested an opportunity to provide further details in that regard.

The court concluded that the parents had not met their burden of establishing one of the exceptions to section 366.26, subdivision (c)(1)B),² terminated parental rights, and ordered adoption as the permanent plan. These appeals followed.

DISCUSSION

I. Adequacy of the Department Report

Father contends that the report prepared for the section 366.26 hearing did not comply with the requirements of section 366.21, subdivision (i)(1)(B). Section 366.21, subdivision (i)(1) mandates that whenever a court orders a section 366.26 hearing it shall direct the agency supervising the child to prepare an assessment. The assessment shall include “A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement.” (§ 366.21, subd. (i)(1)(B).) Father argues that the report prepared by the Department contained no information on the nature of the interaction between D. and her parents. Citing *In re Lisa D.* (1991) 227 Cal.App.3d 613 (*Lisa D.*), he asserts the juvenile court order terminating parental rights must be reversed. We are not persuaded.

In *Lisa D.*, the father appealed from the court’s order appointing a guardian for his children. He claimed that the required social worker’s report pursuant to section 366.25, subdivision (e) was statutorily defective. Such a report must include the proposed guardian’s social history, including criminal background and referrals for child abuse and

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Former section 366.26 subdivision (c)(1)(A), in effect when the petition was filed, and before the date of the section 366.26 hearing, provides that if a court determines that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption unless the court finds a compelling reason for determining that termination would be detrimental due to the fact that the parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. As of 2008, when the section 366.26 hearing took place, that section was recodified in section 366.26, subdivision (c)(1)(B)(i).

neglect, and information showing the proposed guardian's understanding of the rights and responsibilities of guardianship. (*Lisa D.*, *supra*, 227 Cal.App.3d at p. 615.) Santa Barbara County conceded the report was deficient, but argued the father failed to show that a proper report would have led to a more favorable result. The appellate court disagreed, finding that the juvenile court was required to have complete and accurate information concerning the proposed guardian in order to safeguard the welfare of dependent children. It held that the report's statutory deficiency required reversal of the guardianship order. (*Ibid.*)

The report in the present case has not been shown to be statutorily deficient. We note that the provision in question does not define the term "nature of any contact." We have reviewed the visitation log prepared by the maternal grandmother, and it provides a great deal of information. Indeed, Father lists the details of the parents' visits in his opening brief, all of which are taken from the log. Thus, the court was provided information regarding the date and time of the visit, the length of the visit, the activities undertaken, and the significance of the visit (e.g., a holiday or a birthday). We conclude that the report, which contained a copy of the visitation log, sufficiently outlined the nature of the contact between the parents and the children.

The case of *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330 (*Lorenzo C.*) is instructive. There the social worker's report informed the court that during a certain period the minor and the father had no reported visits and during another period the father visited "on a regular basis, sometimes daily, from November 1994 until January 1995. These visits were supervised by the caretakers. There is no information available as to the quality of these visits or the exact number of visits that took place during this time." (*Id.* at p. 1337.) The report noted that the father and minor lived off and on in the same home and there appeared to be some evidence of bonding during that time. (*Ibid.*) Contrary to the father's claim, the court determined that the report was not required to address the "'the real strength and quality of the [parent-child] bonding' and whether termination will be a 'substantial loss' for the child." (*Id.* at p. 1343.) It concluded that the summary provided by the social worker complied with the statutory mandate to

describe the amount and nature of any parent-child contact. (*Id.* at p. 1337.) The report utilized by the court in the instant case provided more detail than the report in *Lorenzo C.*

More importantly, as Father concedes, once the court determined that D. was likely to be adopted, the parents had the burden of proving that they maintained regular contact with D. and that she would benefit from continuing the relationship. To the extent the parents believed that the report did not sufficiently address the bond between them and D., this was precisely the type of information they could have provided to the court. (See *In re Urayna L.* (1999) 75 Cal.App.4th 883, 887.) Although the parents testified at the September 11 hearing, they failed to carry their burden. Mother merely told the court that she visited as often as she could. Father did not address the issue at all. Neither offered evidence that D. would benefit from continuing the parent-child relationship.

The court did not err by terminating parental rights.

II. Adoption

The parents contend that there was no need to terminate parental rights and have the grandparents adopt D. They argue the court could have provided D. with permanence and stability by selecting legal guardianship as the permanent plan. We disagree.

We have determined that the court properly terminated parental rights. The court found D. was adoptable, a finding the parents do not challenge. At this point, the focus shifts to D.'s interest in permanence and stability rather than the parents' interest in preserving the family unit. (*Lorenzo C.*, *supra*, 54 Cal.App.4th at p. 1340.)

The parents urge that adoption should not be selected as the permanent plan when the potential adoptive parent is a relative to the birth parent, as is the case here. We rejected that contention in *In re Jasmine T.* (1999) 73 Cal.App.4th 209, 213-214. In that case, the mother argued that placement of her daughter with the paternal grandmother permitted the court to select legal guardianship. We held that absent statutory exceptions in section 366.26, the court must order adoption as the permanent plan, and "[t]he fact that a potential adoptive parent is a relative does not constitute an exception, allowing the

court to order legal guardianship. [Citation.] At the permanency planning hearing, the court is required to choose the disposition best for the child even though the child's and parent's interests have diverged. [Citation.]" (*Ibid.*) We found that the juvenile court properly chose adoption as Jasmine's permanent plan. We reach the same conclusion here.

DISPOSITION

The judgment (orders of the juvenile court) is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.